IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1069 OF 2007

Rajendra Popat Ghodke. ...Petitioner.
Vs.
National Indusrance Co. Ltd. & Ors. ...Respondents.
....
Mr. R. S. Datar for the Petitioner.
Smt. Arati B. Barve for Respondent No.1.
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CORAM :DR.D.Y.CHANDRACHUD, J.
July 4, 2007.

P.C.:

Rule. By consent made returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent and at their request the matter is taken up for hearing and final disposal.

The petition before this Court under Article 227 of the Constitution was directed against an order passed by the Member of the Motor Accident Claims Tribunal, Kalyan, on an application under Section 140 of the Motor Vehicles Act, 1988. The Second, Third and

Fourth Respondents instituted MACP 178 of 2005 against the Petitioner and the First Respondent before the Accident Claims Tribunal at Kalyan. The application for compensation was filed under Section 140 of the Motor Vehicles Act, 1988. The claimant contended that on 18th July 2005 at about 12.15 p.m. the deceased was walking on the left side of the Road at Ulhasnagar when he was knocked down by a Mini Bus. The deceased received grievous injuries and died as a result thereof. The Mini Bus was owned by the Petitioner and was directly insured with the First Respondent.

The Learned Member of the Tribunal allowed the application under Section 140 in part, by directing the Petitioner to deposit an amount of Rs.50,000/- within a period of two weeks from the date of the order. However, the Insurance Company, which is the First Respondent, was exonerated. On behalf of the Petitioner it has been urged that the entire case of the Petitioner is that the vehicle had been given to a Motor Garage for repairs and the Petitioner himself had no knowledge that the Bus would be driven by a mechanic who did not have a driving licence. In these circumstances

it has been urged that whether there is a breach of the condition of the Insurance Policy is a matter of evidence and it could not be decided in the course of the summary procedure under Section 140. Finally it was submitted that at the highest, liberty may be granted to the Insurance Company to recover the amount paid under Section 140 against the Petitioner as the owner of the vehicle if in the ultimate finding it is found that the Insurance Company is legally entitled to the same.

It is material to note that the Tribunal has, in the present case, only adverted to the submission of the Insurance Company that there was a breach of the condition of the Insurance Policy for the reason that the offending vehicle was being plied by a driver who did not possess any valid driving licence. In such a case, the issue as to whether there was a breach of a condition of the Insurance Policy cannot in the very nature of things be resolved in an application under Section 140 of the Motor Vehicles Act, 1988. At the present stage, it would not be appropriate to relieve the Insurance Company from whom the policy was admittedly taken

by the Petitioner. At the highest, if the Tribunal ultimately comes to the conclusion that the Insurance Company is would not liable, the Insurance Company would then be at liberty to take steps in accordance with law to recover the amount thus paid under Section 140 from the owner of the vehicle. For the aforesaid reasons, the petition must succeed and is accordingly allowed in part. The impugned order of the Tribunal in so far as it exonerates the First Respondent herein from the payment under Section 140 of the Motor Vehicles Act, 1988 and fastening liability upon the Petitioner, shall stand quashed and set aside. The First Respondent shall deposit the compensation under Section 140, quantified at Rs.50,000/- within a period of 8 weeks from today, before the Tribunal. The claimant will be at liberty to withdraw the same. The rule is accordingly made absolute. No order as to costs.

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